to imply that the power to compromise claims flows from the power to sue and be sued which is expressly granted to school boards in California?[9] In regard to municipal corporations, there is abundant authority to the effect that they may compromise claims against them.[10] In one case the court asked, "If they have the power to accomplish an object, have they not the choice of the legal means by which it may be done?"[11] The same inquiry is relevant to school boards and the question of their power to compromise claims. The board in the principal case, having power to employ teachers[12] and to sue and be sued,[13] rendered its district liable for the breach of the contract by which it employed the plaintiff as a teacher.[14] And, if the board had waited for suit to be brought on the contract, the measure of damages in favor of the teacher would prima facie have been the wages agreed to be paid, less what the teacher might by the exercise of reasonable diligence have earned or actually did earn in the same line of employment.[15] Surely, it was not an unreasonable assumption of power for the board to avoid the threatened litigation by compromising for two hundred dollars. Neither is any serious violence done to the notion of the limited powers of school boards if we say of them, as has been said of other boards,[16] that their power to sue and defend suits carries with it, by necessary implication, the power to make bona fide compromise adjustments of such suits.

G. B. W.

TRUSTS: NECESSITY OF SEGREGATION OF TRUST FUND.—In *Molera v. Cooper*[1] the defendant in a suit by an executor on a promissory note set up the defense that the testator, in consideration of the defendant's agreeing that he would hold the amount of

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24 Mont. 219, 61 Pac. 250; Wright v. Rosenbloom (1900), 52 N. Y. App. 579, 66 N. Y. Supp. 165; Honaker v. Board of Education (1896), 42 W. Va. 170, 57 Am. St. Rep. 847.

[9] Cal. Pol. Code, § 1575.

[10] O'Brien v. Mayor of New York (1898), 25 Misc. 219, 55 N. Y. Supp. 50; Dillon, Municipal Corporations, § 821; Beach, Public Corporations, § 658; Abbott, Municipal Corporations, § 490; Campbell v. Upton (1873), 113 Mass. 67.

[11] Augusta v. Leadbetter (1839), 16 Me. 45.

[12] Cal. Pol. Code, § 1617, subd. 7.

[13] Cal. Pol. Code, § 1575.

[14] 25 Amer. & Eng. Encyc. Law, 12; Jackson v. Shera (1893), 8 Ind. App. 330, 35 N. E. 482; Johnson v. School Dist. (Ky., 1897), 38 S. W. 861; Mingo v. School Dist. (Ky., 1902), 68 S. W. 483; Ewing v. School Directors (1887), 2 Ill. App. 458; Scott v. School Dist. (1881), 51 Wis. 554, 8 N. W. 398; Elliott, Public Corporations, 2d. ed., 45.

[15] 35 Cyc. 1097; Jackson County School Directors v. Kimmel (1889), 31 Ill. App. 537; Splaine v. School Dist. (1898), 20 Wash. 74, 54 Pac. 766.

[16] Board of Com'rs v. Tollman (1906), 145 Fed. 753, 772; 1 Dillon, Municipal Corporations, § 821 and notes.

[1] (Sept. 27, 1915), 21 Cal. App. Dec. 363.

money then owing on the note in trust for certain named beneficiaries, released defendant's obligation on the note. It was contended that the defendant thereby became the trustee of the money for the beneficiaries and purposes named. There was no segregation of the fund, no payment on account of the trust, and the beneficiaries were not informed of it. The District Court of Appeal said that these last-named elements were merely evidentiary matters of importance in determining whether or not a trust was declared, and reversed a judgment for plaintiff given on the pleadings.

If there had been a release of the note, and a declaration of trust as set forth in the answer, and if the defendant had set aside the sum due on the note in a special fund and held it in trust for the beneficiaries, all the requisites of a valid trust would have been present. But if no segregation was made the objection arises that one of the requisites of a trust, a specific trust res, is lacking. A trust res need not consist of tangible property. Intangible property, a specific obligation against a third person, may constitute the trust res. Logically, where there is no segregation, the defendant merely holds a debt against himself of the amount due on the note for the beneficiaries. Our law has not considered John Jones, the individual, and John Jones, trustee, as being such separate and distinct legal persons that the latter as trustee can sue himself as an individual; and has not, except in a few cases, treated such a debt against himself as sufficient to constitute a trust res. The cases of M'Fadden v. Jenkyns[2] and Eaton v. Cook,[3] cited in the opinion of the District Court of Appeal, have been generally criticised for failing to distinguish between a trust and a debt,[4] and fail to emphasize the necessity of a specific trust res.[5]

As the principal case was presented solely on the pleadings, which definitely alleged the release of the debt and the creation of a trust, it was proper that the case should be sent back for trial, that the actual facts might be determined.

O. K. P.

WILLS: REQUISITES OF A NUNCUPATIVE WILL.—In the attempt to carry out the wishes of a deceased person expressed in an invalid will, the query has sometimes been made, may the oral statements of the testator at the time of executing the invalid will be

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[2] (1842), 1 Ph. Ch. 153.

[3] (1874), 25 N. J. Eq. 55.

[4] In a note to M'Fadden v. Jenkyns in 1 Ames, Cases on Trusts, 2d. ed., p. 48, the editor says, "Lord Lyndhurst is not alone among eminent judges, in failing to discriminate between a trust and a debt."

[5] The English courts have not recognized the enforceability by a third person of contracts made for his benefit. In order to give a remedy in cases like M'Fadden v. Jenkyns, they have accordingly stretched the law of trusts. 15 Harvard Law Review, 767.